

1 SIGAL CHATTAH, ESQ.
2 Nevada Bar No.: 8264
3 CHATTAH LAW GROUP
4 5875 S. Rainbow Blvd #203
5 Las Vegas, Nevada 89118
6 Tel: (702) 360-6200
7 Fax: (702) 643-6292
8 Chattahlaw@gmail.com
9 Counsel for Plaintiffs

10 JOSEPH S. GILBERT, ESQ.
11 Nevada Bar No.: 9033
12 ROGER O'DONNELL, ESQ.
13 Nevada Bar No.: 14593
14 JOEY GILBERT LAW
15 201 W. Liberty Street, Suite 210
16 Reno, Nevada 89501
17 Tel: (775) 284-7000
18 Fax: (775) 284-3809
19 Joey@joeygilbertlaw.com
20 Co-Counsel for Plaintiffs

14 **UNITED STATES DISTRICT COURT**

15 **DISTRICT OF NEVADA**

16)
17 CAPELLI MILANO, LLC, a Nevada Limited Liability)
18 Company, GV ENTERPRISE LLC, a Nevada Limited)
19 Liability Company ABUZZ II LLC, a Nevada Limited)
20 Liability Company, DARRELEEN GOODMAN, an)
21 individual, KEITH MATTHEWS, an individual BRUCE)
22 FONG D.O, HMD, an individual, ROBISON TACTICAL-)
23 FAITH FAMILY, FIREARMS, A Nevada Business,)
24 ,On behalf of themselves and all similarly situated persons)

25) **Case No.: 20-cv-00827**

26)
27 Plaintiffs,

28) **CIVIL RIGHTS CLASS
vs.) ACTION COMPLAINT
) FOR DAMAGES AND
) INJUNCTIVE AND
) DECLARATORY RELIEF**

25)
26 THE HONORABLE STEPHEN F. SISOLAK, in his)
27 official capacity as Governor of the State of Nevada,)
28 AARON DARNELL FORD, in his official capacity as the)
Attorney General of the State of Nevada, MARILYN)
KIRKPATRICK, in her official capacity as Urban County)
Lead of the Local Empowerment Advisory Panel, J.J.)

25) **JURY TRIAL DEMANDED**

1 GOICOECHEA, in his official capacity as Rural County)
2 Lead of the Local Empowerment Advisory Panel,)
3 SHADABA ASAD, M.D., in her official capacity as a)
4 Member of the State of Nevada Medical Advisory Team;)
5 IHSAN AZZAM, Ph.D., M.D., in his official capacity as)
6 Nevada State Chief Medical Officer; NEVADA DEPT.)
7 OF HEALTH & HUMAN SERVICES, a Nevada)
8 Administrative Agency; JUSTIN LUNA, in his official)
9 capacity as Chief of the Nevada Division of Emergency)
10 Management; NEVADA DEPT. OF PUBLIC SAFETY,)
11 DIVISION OF EMERGENCY MANAGEMENT, a)
12 Nevada Administrative Agency; NEVADA STATE)
13 BOARD OF PHARMACY, a Nevada public body;)
14 DAVID J. WUEST, in his official capacity as Executive)
15 Secretary of the State Board of Pharmacy; NEVADA)
16 DEPARTMENT OF EMPLOYMENT, TRAINING &)
17 REHABILITATION, a Nevada Administrative Agency,)
18 DOES 1 through 100.)
19 Defendants.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

FIRST AMENDED COMPLAINT

16 COME NOW, Plaintiffs, who bring this action on behalf of themselves and on behalf of
17 all similarly situated persons (collectively “PLAINTIFFS”) by and through the undersigned
18 attorneys of record, SIGAL CHATTAH, ESQ., of the CHATTAH LAW GROUP, and JOSEPH
19 S. GILBERT, ESQ., of JOEY GILBERT LAW, who hereby complain of Defendants and each
20 of them and allege as follows:

PARTIES

A. The Plaintiffs

24 1. Plaintiff, GV ENTERPRISE LLC. at all relevant times, is and was a
25 Nevada Limited Liability Company, organized and authorized to do business and doing
26 business in the State of Nevada. Located in Las Vegas, Nevada (Clark County), is in the food
27
28

1 and beverage industry and employed Nevada residents as employees, all of whom have all
2 been laid off since Governor Sisolak's instituted the "shut-down" orders, despite the fact that
3 GV ENTERPRISE, LLC. could have safely operated their business within the CDC's
4 recommended social distancing guidelines.

5 2. Plaintiff CAPELLI MILANO, LLC, at all relevant times, is and was a Nevada
6 Limited Liability Company organized and authorized to do business and is doing business in
7 the State of Nevada. Located in Las Vegas, Nevada (Clark County), is a hair salon business
8 that employed Nevada residents as employees, all of whom have all been laid off since
9 Governor Sisolak's instituted the "shut-down" orders, despite the fact that could have safely
10 operated their business within the CDC's recommended social distancing guidelines.

11 3. Plaintiff DARRELEEN GOODMAN, at all relevant times, is and was a
12 Nevada individual residing in the State of Nevada. Located in Reno, Nevada (Washoe
13 County), Darreleen Goodman is a Barber that was continuously been working and has since
14 been laid off since Defendant Governor Sisolak instituted the "shut down" orders, despite the
15 fact that Darreleen Goodman could have safely operated and worked within the CDC's
16 recommended social distancing guidelines.

17 4. Plaintiff BRUCE FONG, DO, HMD, at all relevant times, is and was a Nevada
18 individual residing in the State of Nevada. Located in Reno, Nevada (Washoe County), Bruce
19 Fong, DO, HMD is an osteopathic medical physician with a valid medical license issued by
20 the State of Nevada, who has been prevented from providing approved treatment to his
21 patients since Defendant Governor Sisolak approved the March 23, 2020 emergency
22 regulation prohibiting the prescription, issuance, filling, and dispensing of chloroquine and/or
23 hydroxychloroquine to outpatients testing positive for COVID-19.
24
25
26
27
28

1 5. Plaintiff KEITH MATTHEWS, at all relevant times, is and was a Nevada
2 individual residing in the State of Nevada. Located in Reno, Nevada. Matthews is a patient
3 who tested positive for COVID-19 and who has been prevented from receiving approved
4 treatment since Defendant Governor Sisolak approved the March 23, 2020 emergency
5 regulation prohibiting the prescription, issuance, filling, and dispensing of chloroquine and/or
6 hydroxychloroquine to outpatients testing positive for COVID-19.
7

8 6. Plaintiff ABUZZ II LLC, at all relevant times, is and was a Nevada Limited
9 Liability Company organized and authorized to do business and is doing business in the State
10 of Nevada. Located in Las Vegas, Nevada (Clark County), is a hair salon business that
11 employed Nevada residents as employees, all of whom have all been laid off since Governor
12 Sisolak's instituted the "shut-down" orders, despite the fact that could have safely operated
13 their business within the CDC's recommended social distancing guidelines.
14

15 7. Plaintiff ROBISON TACTICAL- FAITH FAMILY FACTORS, at all relevant
16 times, is and was a Nevada business organized and authorized to do business and is doing
17 business in the State of Nevada. Located in Las Vegas, Nevada (Clark County), is a defense
18 business that employed Nevada residents as employees, all of whom have all been laid off
19 since Governor Sisolak's instituted the "shut-down" orders, despite the fact that could have
20 safely operated their business within the CDC's recommended social distancing guidelines.
21

22 **B. Defendants**

23 1. Defendant HONORABLE STEPHEN F. SISOLAK, was and is at all times
24 relevant herein the Governor of the STATE OF NEVADA.
25

26 2. Defendant AARON DARRELL FORD, was and is at all times relevant herein
27 the Attorney General for the STATE OF NEVADA.
28

3. Defendant MARILYN KIRKPATRICK, was and is at all times relevant herein
Urban County Lead of the Local Empowerment Advisory Panel, relegated by Defendant
Governor Sisolak during the COVID-19 period and acting on his behalf.

4. Defendant J.J. GOICOECHEA, was and is at all times relevant herein Rural County Lead of the Local Empowerment Advisory Panel, relegated by Defendant Governor Sisolak during the COVID-19 period and acting on his behalf.

5. Defendant SHADABA ASAD, M.D., was and is at all times relevant herein a Member of the State of Nevada Medical Advisory Team, relegated by Defendant Governor Sisolak during the COVID-19 period and acting on his behalf.

6. Defendant IHSAN AZZAM, Ph.D., M.D., was and is at all times relevant herein the Chief Medical Examiner for the STATE OF NEVADA, relegated by Defendant Governor Sisolak during the COVID-19 period and acting on his behalf.

7. Defendant, NEVADA DEPARTMENT OF HEALTH & HUMAN SERVICES, was and is at all times relevant herein an Administrative Agency operating in the STATE OF NEVADA, acting with and at the direction of Defendant Governor Sisolak.

8. Defendant, JUSTIN LUNA, was and is at all times relevant herein Chief of the NEVADA DIVISION OF EMERGENCY MANAGEMENT, acting in said capacity and simultaneously with Defendant Governor Sisolak, issued Orders and Emergency Directives under NRS 414 et. seq.

9. Defendant, NEVADA DEPARTMENT OF PUBLIC SAFETY, DIVISION OF
EMERGENCY MANAGEMENT, was and is at all times relevant herein an Administrative
Agency operating in the STATE OF NEVADA, acting with and at the direction of
Defendant Governor Sisolak.

1 10. Defendant, NEVADA STATE BOARD OF PHARMACY, was and is at all
2 times relevant herein, a public body operating in the STATE OF NEVADA, acting in with
3 and at the direction of Defendant Governor Sisolak.

4 11. Defendant, DAVID J. WUEST, was and is at all times relevant herein the
5 Executive Secretary of the State Board of Pharmacy, acting in said capacity simultaneously
6 with and at the direction of Defendant Governor Sisolak.
7

8 12. Defendant, NEVADA DEPARTMENT OF EMPLOYMENT, TRAINING &
9 REHABILITATION, was and is at all times an Administrative Agency operating in the
10 STATE OF NEVADA, acting with and at the direction of Defendant Governor Sisolak.
11

12 13. At all times pertinent herein, Defendants were agents, servants, employees, or
13 joint venturers of every other Defendant, and at all times mentioned herein were acting
14 within the scope and course of said agency, employment, or joint venture, with knowledge
15 and permission and consent of all other named Defendants. Whenever and wherever
16 reference is made in this Complaint to any acts by Defendants, such allegations and
17 references shall also be deemed to mean the acts of each Defendant acting individually,
18 jointly or severally.
19

20 14. The true names and capacities, whether individual, corporate, associate, or
21 otherwise, of Defendants DOES 1 through 100, are unknown to Plaintiffs, who therefore sue
22 said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon
23 allege that each of the Defendants designated herein as a DOE is responsible in some
24 manner for the events and happenings herein referred to. As such, Plaintiffs will seek leave
25 of Court to amend this Complaint to insert the true names and capacities of said Defendant
26 as they become identified.
27

NATURE OF ACTION AND JURISDICTION

1 15. This is a civil action under 42 U.S.C § 1983 seeking damages and injunctive
2 relief against Defendants for committing acts, under color of law, with the intent and for the
3 purpose of depriving Plaintiffs of rights secured under the Constitution and laws of the
4 United States; retaliating against Plaintiffs; and for refusing or neglecting to prevent such
5 deprivations and denials to Plaintiffs.

6 16. This action arises under 42 U.S.C. § 1983 in relation to Defendants'
7 deprivation of Plaintiffs' Constitutional rights to Due Process and Equal Protection under
8 the Fifth and Fourteenth Amendments to the U.S. Constitution. Accordingly, this Court has
9 Federal Question Jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has authority
10 to award the requested declaratory relief under 28 U.S.C. § 2201; the requested injunctive
11 relief and damages under 28 U.S.C. § 1343(a); and attorneys' fees and costs under 42
12 U.S.C. § 1988. Plaintiffs, therefore, on behalf of themselves and all others similarly
13 situated, seek damages and declaratory and injunctive relief accordingly.

14 17. The U.S. District Court for the District of Nevada is the appropriate venue for
15 this action pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because it is the District in which
16 Defendants either maintain offices or do substantial official government work in, exercise
17 their authority in their official capacities, and will continue to enforce the Orders and
18 Emergency Directives; and it is the District in which substantially all of the events giving
19 rise to the claims occurred.

20 18. This Court has supplemental jurisdiction over Plaintiffs' State law claims
21 pursuant to 28 U.S.C. § 1337(a) because they are part of the same case and controversy
22 described by Plaintiffs' Federal claims.

INTRODUCTION

1 19. In the wake of the novel coronavirus (“COVID-19”), the State of Nevada
2 Executive Administrators and their Agencies hastily instituted a series of State and County-
3 wide orders and emergency directives (the “Orders and Emergency Directives”) in an effort
4 to stem the spread of COVID-19. As well-intentioned as these Orders and Emergency
5 Directives are with respect to the general public’s health, safety and welfare, they have
6 come at a steep price with respect to the complete and utter restraint on Nevadans’ civil
7 rights and liberties.

8
9
10 20. This class action challenges the constitutionality of Defendants’ Orders and
11 Emergency Directives to curb Plaintiffs’ civil rights and liberties by ordering draconian
12 “shelter-in-place” orders, effectively shuttering so-called “Non-Essential Businesses” all
13 across the State of Nevada, and restricting the practice of medicine by Nevada physicians
14 and the ability of patients to receive treatment for COVID-19.

15
16 21. If allowed to stand, Defendants’ Orders and Emergency Directives will not
17 only continue to violate Plaintiffs’ rights under both the Nevada and U.S. Constitutions, but
18 Defendants will continue to inflict massive and widespread economic damage to Plaintiffs –
19 all while unconstitutionally placing the burden of Defendants’ respective Orders and
20 Emergency Directives on the backs of both small and large “Non-Essential Businesses”,
21 such as those of Plaintiffs, who have already been financially crippled, forced to shut their
22 doors for business and to conduct mass layoffs, in addition to prohibiting the treatment of
23 patients testing positive for COVID-19 by licensed Nevada physicians.

24
25 22. Indeed, as a result of Defendants’ wanton and unlawful Orders and
26 Emergency Directives, many of these Plaintiffs’ “Non-Essential Businesses” might
27 never financially recover and may end up closing their doors forever. Further,

1 Defendants' grossly negligent restriction of drugs approved by the FDA for use in
2 the treatment of COVID-19 is both unlawful and unconscionable, and puts Nevadans
3 at risk of irreversible illness and even possible death. The stakes for immediate relief
4 from this Court for Plaintiffs could not be higher.
5

6 23. Accordingly, Plaintiffs bring this class action challenging the Constitutionality
7 of Defendants' Orders and Emergency Directives, which have deprived them of numerous
8 rights and liberties under both the U.S. and Nevada Constitutions.

9 24. In doing so, Plaintiffs seek: (1) equitable and injunctive relief to enjoin the
10 enforcement of Defendants' Orders and Emergency Directives; (2) declaratory relief from
11 this Court in declaring that Defendants' Orders and Emergency Directives violate Plaintiff's
12 civil rights under: (a) 42 U.S.C. § 1983 of the Federal Civil Rights Act ("§ 1983"), (b) the
13 Due Process and (c) Equal Protection Clauses of the Fifth and Fourteenth Amendments, and
14 (d) Article 1 and 5 of the Nevada Constitution; (3) attorney's fees and costs for the work
15 done by Plaintiffs' counsel in connection with this lawsuit in an amount according to proof;
16 and (4) for such other and further relief as the Court deems just and appropriate.
17
18

CLASS ALLEGATIONS

19 25. The treatment to which Plaintiffs, and the class they represent, have and will be
20 subjected, specifically—the arbitrary closure of "Non-Essential Businesses", the arbitrary
21 closure of religious institutions and places of worship, the violation of NRS 414.155, the
22 arbitrary restriction of drugs approved by the FDA for use in the treatment of COVID-19,
23 the violation of NRS 441A.200, the violation of Plaintiffs' First, Second, Fourth, Fifth and
24 Eighth Amendment Constitutional rights – were all performed pursuant to the policies,
25 customs, and/or practices of Defendants.
26
27

1 26. Plaintiffs, on behalf of themselves and of the class of similarly situated
2 persons, seek an order declaring that Defendants' treatment of Plaintiffs pursuant to these
3 policies, customs, and/or practices is unlawful.

4 27. Plaintiffs bring this action on their own behalf and on behalf of all persons
5 similarly situated, pursuant to Federal Rule of Civil Procedure 23(b)(3). Plaintiffs seek
6 certification of a class defined as follows:

- 7 a. All persons who were forced to close "Non-Essential Businesses" were
8 unable to receive unemployment benefits through the Department of Employment,
9 Training & Rehabilitation ("DETR");
10 b. All persons who were deprived of their Constitutional rights under NRS
11 414.155;
12 c. All persons who were deprived of their Constitutional and Statutory
13 rights under NRS 441A.200 and as described in *Roe v. Wade* (1973); and
14 d. All persons affected by the wanton and reckless disregard of
15 Defendants' conduct to the detriment of the residents of the State of Nevada.

16 28. Pursuant to Federal Rule of Civil Procedure 23(a), the members of the class are
17 so numerous that joinder of all members is impractical. Plaintiffs do not know the exact
18 number of class members. Plaintiffs are informed and believe, and thereupon allege that
19 there are more than 100,000 persons in the class defined above.

20 29. Pursuant to Federal Rule of Civil Procedure 23(a), Plaintiffs are informed and
21 believe, and thereupon allege, that there are questions of law and fact common to the class,
22 including but not limited to:

- 23 a. Whether the grossly negligent closure of businesses deemed "Non-
24 Essential Businesses" under Chapter 414 of the Nevada Annotated Code for a

1 prolonged period of eight weeks was arbitrary and capricious action taken by
2 Defendant Governor Sisolak and the Defendants named above;

3 b. Whether the emergency regulation prohibiting the prescription and
4 issuance, filling, and dispensing of chloroquine or hydroxychloroquine for
5 outpatients testing positive for COVID-19 was arbitrary and capricious action and
6 willful misconduct on behalf of Defendant Governor Sisolak, Defendant Wuest,
7 and Defendant State Board of Pharmacy (“BOP”);

8 c. Whether the Emergency Directives closing Nevada School Systems
9 was grossly negligent taking into account that termination of the 2020 school year
10 for the State of Nevada was arbitrary and capricious and not supported by
11 substantial evidence or justification of same;

12 d. Whether Defendants’ bad faith and willful misconduct harmed the
13 Plaintiff class and chilled their Freedom of Speech and Association and Free
14 Exercise of Religion in violation of the First Amendment;

15 e. Whether Defendants engaged in gross negligence, willful misconduct,
16 and bad faith and are liable for violating the First, Second, Fourth, and Fourteenth
17 Amendment rights of the Plaintiff class; and

18 f. Whether Defendants should be enjoined from engaging in this gross
19 negligence and willful misconduct which has been detrimental to the State of
20 Nevada and its residents.

21 30. Pursuant to Federal Rule of Civil Procedure 23(a), Plaintiffs’ claims are typical
22 of the class they seek to represent. Plaintiffs and the class they seek to represent were all
23 subjected to violations of their Constitutional rights over the course of the past eight weeks
24 in the State of Nevada.

1 31. Plaintiffs have the same interests and have suffered the same type of injuries as
2 the proposed class. Each proposed class member suffered actual damages as a result of the
3 challenged conduct.

4 32. Plaintiffs' claims arose because of Defendants' policies, customs, and/or
5 practices. Plaintiffs' claims are based upon the same legal theories as the claims of the
6 proposed class members.
7

8 33. Plaintiffs' counsel has the resources, experience, and expertise to successfully
9 prosecute this action against Defendants. Counsel knows of no conflicts among any
10 members of the class, or between counsel and any members of the class.
11

12 34. Pursuant to Federal Rule of Evidence 23(b)(3), upon certification, class
13 members must be furnished with the best notice practicable under the circumstances,
14 including individual notice to all members who can be identified through reasonable effort.
15

16 35. If this action is certified as a class action, Plaintiffs contemplate that individual
17 notice will be given to class members, at such last known address by first class mail, as well
as notice by publication informing them of the following:
18

- 19 a. The pendency of the class action and the issues common to the class;
20 b. The nature of the action;
21 c. The right to "opt-out" of the action within a given time, in which event
they will not be bound by a decision rendered in the class action;
22 d. Their right to "opt-out" to be represented by their own counsel and to
enter an appearance in the case, otherwise they will be represented by the named
23 class Plaintiffs and their counsel; and
24
25
26
27
28

1 e. Their right, if they do not “opt-out”, to share in any recovery in favor of
2 the class, and conversely, to be bound by any judgment on the common issues
3 adverse to the class.

4 **FACTS AND CIRCUMSTANCES SURROUNDING ALL CLAIMS**

5 36. The global COVID-19 pandemic brought on by an infectious and
6 communicable disease caused by the recently discovered coronavirus, has caused
7 catastrophic and unprecedented economic damage across the globe, and with it, significant
8 loss of life and fundamental changes to both world and national economies, and specifically,
9 the manner in which businesses are permitted to run, if at all.

10 37. To be sure, State and U.S. officials have faced tremendous adversity in
11 planning, coordinating, and at times executing effective nationwide and statewide policies to
12 protect the general public’s health, safety and welfare during this time of crisis.

13 38. However, these policies, as well-intentioned as they may be, have had an
14 unlawful and disparate effect on some people, their health and their businesses over other
15 people and their health and their businesses, to the point where life, liberty and the pursuit of
16 happiness have been ripped away from law-abiding citizens and businesses.

17 39. On or about March 13, 2020, President of the United States (“POTUS”)
18 Donald J. Trump proclaimed a National State of Emergency as a result of the threat of the
19 emergence of COVID-19.

20 40. On March 16, 2020, POTUS announced “*15 Days to Slow the Spread*” –
21 Coronavirus Guidelines for America based on the Center for Disease Control (“CDC”)
22 recommendations.

23 41. Though a Federal Mandate was not issued, these guidelines and
24 recommendations for the general public and State Agencies were made based on COVID-19

1 projections established by the CDC and the Institute of Health Metrics and Evaluation
2 (“IHME”).

3 42. Over the course of the subsequent thirty days, it became noticeably clear that
these projections were grossly over-exaggerated and correlating restrictions were
5 unnecessary.

6 43. Specifically, since the initial outbreak in February and March of 2020, the
7 Federal Government’s projections of anticipated U.S. deaths related to the virus have
8 decreased substantially, by an order of magnitude. Yet, despite such revisions, Defendants
9 have continued to increasingly restrict—and in some cases have even outright banned—
10 Plaintiffs’ engagement in constitutionally-protected activities.

11 44. On February 04, 2020, Defendant Governor Sisolak issued Executive Order
12 2020-01, finding that “[d]ocuments, records, or other items of information which may reveal
13 the details of a specific emergency plan or other tactical operations by a response agency...
14 are hereby deemed confidential and not subject to subpoena or discovery, and not subject to
15 inspection by the general public...,” to include “[h]andbooks, manuals, or other forms of
16 information detailing procedures to be followed by response agencies in the event of an...
17 emergency...” (“Executive Order 2020-01”). Such an Order seeks to prevent accountability
18 of the Defendants’ actions over the days that would follow.

19 45. On March 12, 2020, Defendant Governor Sisolak activated the State
20 Emergency Operations Center, in an effort to coordinate a response and minimize the
21 impact and further transmission of COVID-19 to persons in Nevada, and such declaration
22 was made to remain in effect until the end of the COVID-19 emergency (“Emergency
23 Declaration”).

1 46. Chapter 414 of the Nevada Revised Statutes, entitled *Emergency Management*,
2 delineates the Executive Authority that Defendant Governor Sisolak enjoys, and albeit
3 broadly extends certain powers to the Governor, it does not allow for arbitrary and
4 capricious actions, willful misconduct or grossly negligent conduct taken against the State,
5 or against the residents of Nevada.

6 47. Accordingly, Defendant Governor Sisolak and other named Defendants
7 engaged in actions that were arbitrary and capricious, grossly negligent, willful misconduct
8 and in bad faith, in the execution and enforcement of those powers delineated in Chapter
9 414 of the Nevada Revised Statutes, as stated *infra*.

10 48. NRS 414.110 specifically precludes immunity for such actions that are based
11 on willful misconduct, gross negligence, or bad faith.

12 49. It has become exceedingly clear that Defendant Governor Sisolak and
13 associated Defendants named herein have engaged in gross negligence, bad faith and willful
14 misconduct by issuing Orders and Emergency Directives that are arbitrary and capricious,
15 and not supported by substantial evidence to merit same.

16 50. On March 15, 2020, Defendant Governor Sisolak closed all schools, effective
17 March 16, stating that schools may not reopen earlier than April 6 (“Emergency Directive
18 001”). On April 21, 2020, Defendant Governor Sisolak declared that schools in Nevada
19 were dismissed for the remaining 2020 school year.

20 51. On March 18, 2020, Defendant Governor Sisolak closed all gaming
21 establishments and gaming activity, and such declaration was made to remain in effect until
22 April 16 (“Emergency Directive 002”).

Unemployment Allegations.

52. Following Defendant Governor Sisolak's aforementioned Orders and
Emergency Directives, Defendant DETR received 347,978 new claims for unemployment
benefits. Defendant DETR is the only administrative office in the State of Nevada that
handles state unemployment benefits.

53. As part of the Orders and Emergency Directives, Defendant Governor Sisolak
instructed Defendant DETR to waive verification periods, to serve as an immediate
disbursement of unemployment benefits to the over 300,000 unemployed individuals living
in Nevada.

54. As of the date of filing of this Complaint, there are over 100,000 individuals
who have not received any unemployment relief through the grossly-mismanaged Defendant
DETR agency, since the beginning of the COVID-19 pandemic.

55. Defendant Governor Sisolak grossly neglected to ensure that Nevadans have
financial benefits to sustain the arbitrary and capricious closures of Nevada businesses,
leaving them financially devastated and hungry, and robbing them of their dignity.

56. The failure of Defendant DETR to adequately function during this time of
crisis, despite the available financial resources, demonstrates the grossly negligent and
inadequate manner that Defendants have endeavored to secure Nevada's residents' interests
during this crisis.

"Essential Businesses" vs. "Non-Essential Businesses"

57. On March 20, 2020, Defendant Governor Sisolak, in joint action with
Defendant Department of Public Safety, Division of Emergency Management, adopted an
emergency regulation amending Chapter 414 of the Nevada Administrative Code to define
"Essential Businesses" and "Non-Essential Businesses", whereby "Non-Essential

1 Businesses” were to cease operations until April 16, and where “Essential Businesses” were
2 authorized to remain open so long as strict guidelines were followed to reduce the likelihood
3 of transmitting COVID-19. Specifically, adequate social distancing, contactless payments
4 when possible, and delivery only for retail cannabis dispensaries (“Emergency Directive
5 003”).
6

7 58. NRS 233B.066(2) mandates that each adopted regulation be accompanied by:
8 (i) a clear and concise explanation of the need a for the adopted regulation; (ii) the estimated
9 economic effect of the regulation on the business which it is to regulate and on the public,
10 which shall be stated separately, and in each case must include: (1) both adverse and
11 beneficial effects; and (2) both immediate and long term effects; (iii) the estimated cost to
12 the agency for enforcement of the proposed regulation; (iv) a description of any regulations
13 of other state or government agencies which the proposed regulation overlaps or duplicates,
14 a statement explaining why the duplication or overlapping is necessary, and if the regulation
15 duplicates or overlaps a federal regulation, the name of the regulating federal agency; (v) if
16 the regulation includes provisions which are more stringent than a federal regulation which
17 regulates the same activity, a summary of such provisions; and (vi) if the regulation
18 provides a new fee or increases an existing fee, the total annual amount the agency expects
19 to collect and the manner in which the money will be used. *See* NRS 233B.066.
20

21 59. Both Defendants Governor Sisolak and Luna endorsed the March 20, 2020
22 emergency regulation amending Chapter 414 of Nevada Administrative Code, and in its
23 accompanying Informational Statement as required by NRS 233B.066(2), affirmed that: (i)
24 there was no economic effect of the regulation on the businesses which it is to regulate; (ii)
25 there was no economic effect of the regulation on the general public which it is to regulate;
26 (iii) there was no estimated cost to the agency for enforcement of the regulation; (iv) the
27

1 regulation did not overlap or duplicate a federal regulation; (v) the regulation does not
2 include provisions which are more stringent than a federal regulation which regulates the
3 same activity; and (vi) the regulation does not establish a new fee or increase an existing
4 fee.

5 60. The affirmations made by Defendants Governor Sisolak and Luna in the March
6 20, 2020 Informational Statement are a gross misrepresentation of the stringent measures
7 taken and are a direct violation of subsections (1)(g), (1)(h), (1)(i), and (1)(j) of NRS
8 233B.066.

9 61. In their affirmations, Defendants Governor Sisolak and Luna deliberately,
10 willfully, and with a conscious disregard for the truth, violated: NRS 233B.066(1)(g) by
11 refusing to provide the estimated economic effect of the regulation on the businesses and
12 persons which it is regulating; NRS 233B.066(1)(h) by refusing to provide the estimated
13 cost to the agency for enforcement of the regulation; NRS 233B.066(1)(i) by refusing to
14 state the federal regulations which the regulation duplicates and the applicable federal
15 agency; and NRS 233B.066(1)(j) by refusing to delineate the stringent measures that the
16 State of Nevada incorporated, despite no federal mandate for the same.

17 62. On March 20, 2020, Defendant Department of Public Safety, Division of
18 Emergency Management arbitrarily and capriciously passed an Emergency Administrative
19 Regulation amending Chapter 414 of the Nevada Administrative Code, adding a section
20 entitled “Business During Times of Declared Emergency (NRS 414.060, 414.070) ”,
21 whereby Nevada businesses were classified as either an “Essential Licensed Business” or a
22 “Non-Essential Business”.

23 63. Despite Emergency Directive 003 stating that the Nevada Attorney General
24 opined in Opinion Number 9 5-03 “that, in the context of the Governor’s exercise of powers

1 under NRS Chapter 414, municipalities exceed their statutory authority in adopting
2 emergency powers that: ...prohibit the sale or distribution of guns, ammunitions or
3 explosives; or close businesses which sell guns, ammunition or explosives..." and despite
4 its prohibition by NRS 414.155, the March 20, 2020 emergency regulation included firearm
5 retailers as a "Non-Essential Business".
6

7 64. Whereby in adopting the March 20, 2020 emergency regulation, Defendants
8 Governor Sisolak and Luna blatantly and willfully violated NRS 414.155, Amendment II of
9 the United States Constitution, and Article I § 11 of the Nevada Constitution.

10 65. Whereby Defendant Ford took no action to prevent or prohibit Defendants
11 Governor Sisolak, Luna, or Department of Public Safety, Division of Emergency
12 Management from adopting the unlawful March 20, 2020 emergency regulation, Ford
13 engaged in willful misconduct.
14

15 66. On March 22, 2020, Defendant Governor Sisolak suspended certain provisions
16 contained in Chapter 241 of the Nevada Revised Statute ("Open Meeting Law") until April
17 16, and specifically, suspending requirements pertaining to public meetings and posting
18 notices at physical locations ("Emergency Directive 006").
19

20 67. Defendants actions lacked any empirical date for which they were based upon.
21 The designation of essential vs non-essential business was based on the services the
22 business rendered, not business capacity, public health or empirical data.
23

24 68. Consequently, many essential business including but not limited to box stores
25 such as grocery stores, Costco, Sam's Club, Target, Home Dept, Lowes, and Walmarts were
26 servicing an overwhelming number of patrons, regardless of social distancing guidelines,
27 demonstrating that the Executive Directives were arbitrary capricious and unsubstantiated
28 by any empirical date in support thereof.

1 **Chloroquine and Hydroxychloroquine**

2 69. On March 23, 2020, based upon the recommendation provided by the
3 Defendant Governor's COVID-19 Medical Advisory Team, and specifically Defendants
4 Asad and Azzam, Defendant Wuest and Defendant State Board of Pharmacy ("BOP")
5 sought and received endorsement by Defendant Governor Sisolak for its own statement of
6 emergency, by letter of the same date, in order to adopt emergency regulations restricting
7 the "prescribing and dispensing" of chloroquine and hydroxychloroquine for patients
8 outside of a hospital setting. Specifically, Defendants Wuest and BOP cited "the hoarding
9 and stockpiling" of these drugs during the COVID-19 pandemic, and the "resulting shortage
10 of supplies of these drugs for legitimate medical purposes" as the basis for its statement of
11 emergency. Defendants Wuest and BOP further claimed that hydroxychloroquine is under
12 investigation for use in the treatment of COVID-19, but that its safety and efficacy have not
13 been established. However, Defendants Wuest and BOP failed to provide any evidence, let
14 alone sufficient evidence, in support of these claims, or its reasons for the existence of an
15 emergency necessitating or justifying the unlawful emergency action taken.

16 70. On March 23, 2020, that same day, and without providing supporting evidence
17 sufficient to reasonably determine the existence of an emergency, and having failed to
18 provide even minimally effective public notice, Defendants Wuest and BOP held an
19 emergency meeting to hear the "Discussion and Possible Action on Adoption of Emergency
20 Regulations pursuant to NRS 233B.0613 to Restrict the Prescribing and Dispensing of
21 Chloroquine or Hydroxychloroquine in Response to Covid-19 (**FOR POSSIBLE**
22 **ACTION**)(the "Agenda"); *see also* NRS 241.015; NRS 241.020.

23 71. The Agenda stated that a public notice of the emergency meeting was given the
24 same day as the meeting. However, any such notice failed to meet the minimum

1 requirements set forth in NRS 241.020 and 233B.0614, as even Members of Defendant BOP
2 were only provided notification of the meeting via email at 2:59 p.m., with the meeting held
3 by teleconference at 3:30 p.m. In this, Defendants Wuest and BOP did not take comments
4 from the general public as required under NRS 241.020. *See* NRS 241.020 (stating that,
5 “[n]o action may be taken upon a matter raised under this item of the agenda until the matter
6 itself has been specifically included on a future agenda as an item...”).
7

8 72. As stated in its Agenda, Defendants Wuest and BOP declared that “[i]n
9 regulating the practice of pharmacy, the Nevada State Board of Pharmacy has a duty to
10 carry out and enforce the provisions of Nevada law to protect the health, safety and welfare
11 of the public.”
12

13 73. On March 23, 2020, citing NRS 639.070 as its statutory authority, Defendant
14 Governor Sisolak, in joint action with Defendant BOP, adopted an Emergency
15 Administrative Regulation amending Chapter 639 of the Nevada Annotated Code,
16 restricting the prescribing and dispensing of chloroquine and hydroxychloroquine for a
17 COVID-19 diagnosis outside of a hospital setting, for a period of 180 days – 60 days longer
18 than allowed by statute. *See* NRS 233B.0613.
19

20 74. Further, NRS 233B.066(2) mandates that each adopted regulation be
21 accompanied by: (i) a clear and concise explanation of the need a for the adopted regulation;
22 (ii) the estimated economic effect of the regulation on the business which it is to regulate
23 and on the public, which shall be stated separately, and in each case must include: (1) both
24 adverse and beneficial effects; and (2) both immediate and long term effects; (iii) the
25 estimated cost to the agency for enforcement of the proposed regulation; (iv) a description
26 of any regulations of other state or government agencies which the proposed regulation
27 overlaps or duplicates, a statement explaining why the duplication or overlapping is
28

1 necessary, and if the regulation duplicates or overlaps a federal regulation, the name of the
2 regulating federal agency; (v) if the regulation includes provisions which are more stringent
3 than a federal regulation which regulates the same activity, a summary of such provisions;
4 and (vi) if the regulation provides a new fee or increases an existing fee, the total annual
5 amount the agency expects to collect and the manner in which the money will be used. *See*
6 NRS 233B.066.

7 75. Both Defendants Governor Sisolak and Wuest endorsed the March 23, 2020
8 emergency regulation amending Chapter 639 of the Nevada Annotated Code, and in the
9 accompanying Informational Statement as required by NRS 233B.066(2), affirmed that: (i)
10 there would be no adverse or beneficial economic impact from the regulation on either the
11 providers of pharmaceutical care that are subject to the regulation, or the public; (ii) there
12 would be no immediate or long term economic effect on either the providers of
13 pharmaceutical care that will be subject to the regulation, or the public, or that any such
14 effects will be negligible; (iii) there would be no additional or special costs incurred by the
15 Board for the enforcement of the regulation; (iv) they are not aware of any similar
16 regulations or other state or government agencies that the proposed regulation overlaps or
17 duplicates; (v) they are not aware of any similar regulations of the same activity in which
18 the federal regulation is more stringent; and (vi) the regulation does not provide a new or
19 increase of fees.

20 76. The affirmations made by Defendants Governor Sisolak and Wuest in the
21 March 23, 2020 Informational Statement are a gross misrepresentation of the stringent
22 measures taken and are a direct violation of subsections (1)(g), (1)(h), (1)(i), and (1)(j) of
23 NRS 233B.066.

1 77. In their affirmations, Defendants Sisolak and Wuest deliberately, willfully, and
2 with a conscious disregard for the truth, violated: NRS 233B.066(1)(g) by claiming that
3 there is no estimated economic effect of the regulation on the businesses and persons which
4 it is regulating; NRS 233B.066(1)(h) by claiming that there is no cost to the agency for
5 enforcement of the regulation; NRS 233B.066(1)(i) by claiming that there are no federal
6 regulations which the regulation duplicates and no applicable federal agency; and NRS
7 233B.066(1)(j) by claiming that there are no similar regulations of the same activity in
8 which the federal regulation is more stringent.

9
10 78. On March 23, 2020, Defendants Governor Sisolak and BOP arbitrarily and
11 capriciously passed an Emergency Administrative Regulation amending Chapter 639 of the
12 Nevada Administrative Code, adding a section prohibiting the issuance, filling, or
13 dispensing of a prescription for chloroquine or hydroxychloroquine to an outpatient for a
14 COVID-19 diagnosis, or for any new diagnosis made after the effective date of the
15 regulation.

16
17 79. Despite Defendant BOP exceeding its authority (see NRS 639.070); despite
18 Defendant BOP impermissibly practicing medicine (see NRS 630.020); despite Defendants
19 Governor Sisolak and BOP interfering with the authority and privilege of a physician to
20 practice medicine, and illegitimately restricting where the practice of medicine can occur
21 (see, e.g., NRS 630.160; NRS 630.049); despite Defendants Governor Sisolak and BOP
22 interfering with a person's right to receive approved treatment for a communicable disease
23 from a physician of his or her choice, which is specifically prohibited by statute (see NRS
24 441A.200); despite the March 23, 2020 emergency regulation being preempted by Federal
25 law; despite the emergency regulation violating a physician and patient's constitutional right
26 to privacy and specifically, the right of an individual to protect his or her health by making
27
28

1 autonomous decisions about medical treatment with a physician of his or her choice, with no
2 justification provided that would warrant such an intrusion (see *Roe v. Wade* (1973) and
3 Amendment XIV, Section 1, of the U.S. Constitution); despite the March 23, 2020
4 emergency regulation violating a physician and patient's constitutional right to equal
5 protection under Amendment XIV, Section 1, of the U.S. Constitution; despite the March
6 23, 2020 emergency regulation violating a physician and patient's constitutional right to due
7 process under Article I, Section 8, of the Nevada Constitution, and Amendment V, Section
8 1, and Amendment XIV, Section 1, of the U.S. Constitution; despite the March 23, 2020
9 emergency regulation's invalidity under NRS 233B.0617; and despite the March 23, 2020
10 emergency regulation being void under NRS 241.036, Defendants Governor Sisolak and
11 BOP adopted the March 23, 2020 emergency regulation.

12 80. Whereby in adopting the March 23, 2020 emergency regulation, Defendants
13 Governor Sisolak, BOP and Wuest blatantly and willfully violated, *inter alia*, NRS 639.070,
14 630.049, 630.160, 441A.200, 233B.060, 233B.0613, 233B.0658, 241.020, 29 CFR Section
15 541.304, 21 U.S.C. et all, 21 U.S.C. § 360bbb-3, *Roe v. Wade* (1973), Article I, Section 8 of
16 the Nevada Constitution, Amendment XIV, Section 1, Amendment V, Section 1, and
17 Amendment XIV, Section 1, of the U.S. Constitution.

18 **Right to Travel and Places of Worship**

19 81. On March 24, 2020, Defendant Governor Sisolak directed all Nevadans to
20 implement physical distancing measures to minimize spread of COVID -19, while
21 prohibiting persons from gathering in groups of ten or more in any indoor or outdoor area
22 until April 16 (“Emergency Directive 007”). Further, Emergency Directive 007 also
23 ordered local governments to limit the general public’s use of recreational equipment and
24

public spaces such as parks and beaches, and authorized local agents to enforce criminal penalties on any person who does not comply.

82. Specifically, Defendant Governor Sisolak's Emergency Directive 007 stated:

a. The Nevada general public shall not gather in groups of ten or more in any indoor or outdoor area, whether publicly owned or privately owned where the public has access by right or invitation, express or implied, whether by payment of money or not, including without limitation, parks, basketball courts, volleyball courts, baseball fields, football fields, rivers, lakes, beaches, streets, convention centers, libraries, parking lots, and private clubs. This provision shall not be construed to apply to the gathering of persons living within the same household, or persons working at or patronizing Essential Licensed Businesses or providing essential services to the public;

b. With the exception of persons residing in the same household, the Nevada general public shall, to the extent practicable, abide by social distancing practices by maintaining a minimum six-foot distance between persons in public spaces, whether privately or publicly owned; and

c. Local governments shall limit the Nevada general public's use of recreational equipment, including without limitation, playground equipment, basketball courts, volleyball courts, baseball fields, beaches, or football fields, in a manner that causes the congregation of ten or more persons in a manner contrary to best COVID-19 disease mitigation social distancing practices.

83. Emergency Directive 007 also threatened that any person who does not comply with its Section 1, after receiving notice from law enforcement, may be subject to criminal

prosecution and civil penalties under NRS 199.280, NRS 202.450, and another other
applicable statutes, regulations, or ordinances.

84. Emergency Directive 007 also instructed that all law enforcement agencies in
the State of Nevada were authorized to enforce this Emergency Directive 007, and that the
Office of the Attorney General is given concurrent jurisdiction to prosecute respective
violations.

85. On March 29, 2020, POTUS recommended the continuation of limitations on
gatherings through April 30, 2020.

86. On March 31, 2020, Defendant Governor Sisolak issued yet another directive
("Emergency Directive 010"), extending the Declaration of Emergency to April 30, 2020,
and thereby all Emergency Directives promulgated pursuant to. Specifically, with limited
exception, Defendant Governor Sisolak ordered all Nevadans to stay in their residences, and
prohibited individuals from gathering outside of their homes, save authorized outdoor
activity, so long as the activity complies with Emergency Directive 007.

87. On April 1, 2020, Defendant Governor Sisolak authorized the Adjunct General
to order into active duty such Nevada National Guard personnel "as he deems necessary to
assist the state's response to the COVID-19 pandemic..." and until "such time as the
Adjunct General determines the need for assistance no longer exists..." ("Emergency
Directive 012").

88. On April 8, 2020, Defendant Governor Sisolak continued the following
closures, until April 30 ("Emergency Directive 013"):

26 a. Publicly accessible sporting and recreational venues that encourage
27 social congregation, including without limitation, golf courses, golf driving ranges,
28 tennis courts, basketball courts, volleyball courts, skate parks, bocce ball courts,

1 handball courts, horseshoe pits, or pickleball courts, shall remain closed for the
2 duration that this Directive is in effect; and

3 b. Places of worship shall not hold in-person worship services where ten
4 or more persons may gather, including without limitation, drive-in and pop-up
5 services, for the remainder of the Declaration of Emergency.

6 89. Further, on April 29, 2020, Defendant Governor Sisolak authorized “Non-
7 Essential” retail businesses identified in Emergency Directive 003 to resume retail sales on a
8 curbside or home delivery basis only, while extending Emergency Directives 003, 006, 007,
9 and 010, respectively, until May 15. As part of this Emergency Directive, Defendant
10 Governor Sisolak advised Nevadans to continue to shelter in place, avoid interpersonal
11 contact with persons not residing in their household, and to utilize face coverings in public
12 spaces.
13

14 90. While “Essential Businesses” continue to operate, and indeed, turn a profit (if
15 not historical profits) during this time of crisis, Plaintiffs’ “Non-Essential Businesses” have
16 suffered immeasurably at the hands of government overreach and unconstitutionally
17 restrictive Orders and Emergency Directives passed and enforced by Defendants, with
18 immense disparate impact across every segment or sector of business in Nevada.
19

20 91. Further, such disparate impact and “scare tactics” are furthered by the
21 Government’s unlawful restriction of chloroquine and/or hydroxychloroquine, both FDA-
22 approved drugs authorized for use in the treatment of COVID-19, and their unwillingness to
23 allow or provide viable treatment options.
24

25 92. The arbitrary and capricious quarantine of all Counties in the State of Nevada,
26 failing to quarantine Covid -19 positive only individuals and instead quarantining all
27 individuals regardless of whether they were positive or not, or whether the Counties had
28

incidents of Covid-19 was arbitrary and unsupported by any empirical data to substantiate such actions.

93. It is significant to note that as of the day of this Amended Complaint, Nye County, Lyon County, Douglas County, Lander County and Mineral County have had no deaths due to Covid-19; Humboldt and Elko County had 3 deaths cumulatively, and the only both Washoe and Clark County combined had under 300 deaths since the beginning of the alleged pandemic.

94. Accordingly, Plaintiffs' complaint against Defendants, and each of them, for violation of the Federal Civil Rights Act, 42 U.S.C § 1983, to declare and enjoin the enforcement of the following Orders and Emergency Directives:

a. Defendant Governor Sisolak’s Emergency Directive 003, and Defendant Division of Emergency Management’s corresponding designation of “Essential Licensed Business” and “Non-Essential Business” as delineated in the March 20, 2020 emergency regulation’s amendment of Chapter 414 of the Nevada Administrative Code;

b. Defendant Governor Sisolak's Emergency Directive 003 violating the Second Amendment rights of Nevada Citizens and NRS 414.155;

c. Defendants Governor Sisolak and BOP's March 23, 2020 emergency regulation amending Chapter 639 of the Nevada Administrative Code, prohibiting the prescribing and dispensing of chloroquine and hydroxychloroquine for an outpatient with a COVID-19 diagnosis;

- d. Defendant Governor Sisolak's Emergency Directive 007, prohibiting Nevadans from gathering in groups of more than 10 people;

1 e. Defendant Governor Sisolak's Emergency Directive 010 and "Stay At
2 Home" Order issued on March 31, 2020; and

3 f. Defendant Governor Sisolak's Emergency Directive 013 issued on
4 April 8, 2020, prohibiting places of worship from holding in-person worship
5 services where ten or more persons may gather.

6 95. Plaintiffs have standing to bring § 1983 claims since they are aggrieved in fact,
7 as businesses that are the subject of enforcement of the overbroad and unconstitutional
8 Orders and Emergency Directives which have the effect of forcing Plaintiffs – which are a
9 collection of Nevada businesses and individuals – to bear a public burden by entirely
10 eviscerating Plaintiffs' ability to operate their respective businesses and restricting their
11 right to receive treatment for a communicable disease.
12

13 96. Plaintiffs have standing to bring § 1983 claims since they are aggrieved in fact,
14 as businesses whose rights have been violated pursuant to Article 1, Section 8, Clause 3 of
15 the U.S. Constitution, which prohibits states from passing legislation that discriminates
16 against or excessively burdens interstate commerce.
17

18 97. Plaintiffs further have standing to bring § 1983 claims since they are aggrieved
19 individuals and Parties that are the subject of enforcement of the overbroad Orders and
20 Emergency Directives infringing on their Free Exercise Clause of the First Amendment to
21 the United States Constitution.
22

23 98. Defendants' Orders and Emergency Directives are in violation of 42 U.S.C. §
24 1983, as is the enforcement of these Orders and Emergency Directives by Defendants, and
25 should be enjoined under § 1983, due to the following circumstances:
26

27 a. The Orders and Emergency Directives plainly violate the Due Process
28 and Equal Protection Clauses of the Fifth and Fourteenth Amendments in that they

1 unconstitutionally and disparately apply one set of rules to businesses arbitrarily
2 deemed “Essential Businesses” versus all other businesses (such as Plaintiffs’) that
3 are deemed “Non-Essential Businesses”, which must close pursuant to the Orders
4 and Emergency Directives. Plaintiffs aver that ALL businesses in the State of
5 Nevada are “Essential” to the health, welfare, and well-being of its citizens, and
6 that the general health outcome sought through the passage of these Orders and
7 Emergency Directives (i.e., lowering the curve of COVID-19) could be
8 accomplished through less restrictive means.

9
10 b. The Orders and Emergency Directives effectively amount to an
11 impermissible “partial” or “complete” taking in violation of the Takings Clause of
12 the Fifth Amendment to the U.S. Constitution in that the prohibition of Plaintiffs’
13 operation of their “Non-Essential Business” constitutes a regulatory taking of
14 private property, for public purpose, without providing just compensation
15 therefore. Furthermore, the Orders and Emergency Directives violate the Takings
16 Clause of the Fifth Amendment in that the complete prohibition of the business
17 operations of “Non-Essential Businesses” constitutes an irrational, arbitrary, and
18 capricious law bearing no rational basis to any valid government interest. The
19 notion that the government-ordered shutdown of “Non-Essential Businesses” (such
20 as Plaintiffs’) is absolutely necessary in curbing the spread of COVID-19
21 constitutes an unconstitutional infringement on Plaintiffs’ civil rights and liberties
22 to operate in a free-market economy. As national and statewide data has recently
23 suggested, the economic impact of the mandatory, unconstitutional closures of
24 “Non-Essential Businesses” has had an unnecessarily devastating and
25 unprecedented crippling effect on local and state economies. ALL businesses are
26
27
28

1 ‘essential’ and necessary to the maintenance of the health, welfare and prosperity
2 of Nevada’s citizens.

3 c. The Orders and Emergency Directives further violate the substantive
4 and procedural due process clauses of the Fifth and Fourteenth Amendments to the
5 U.S. Constitution.

6 d. The Orders and Emergency Directives further violate Article 1,
7 Sections 1, 4, 9, 10, 11 of the Nevada Constitution.

8 e. The Orders and Emergency Directives violate Plaintiff’s Second
9 Amendment right to the United States Constitution and NRS 414.155.

10 f. The Orders and Emergency Directives violate Plaintiffs rights as to
11 conduct business under Article 1, Section 8, Clause 3 of the U.S. Constitution.

12 g. The Orders and Emergency Directives violate Plaintiffs’ rights to the
13 Free Exercise of Religion and are not “narrowly tailored” to further any
14 compelling governmental interest. Defendants have granted numerous special
15 exemptions to their bans on public gatherings and conduct, including for
16 purportedly “Essential Businesses” and activities, provided that social distancing
17 practices are observed. Since these gatherings may be permitted, there can be no
18 doubt that Defendants may, and therefore must, permit Plaintiffs to engage in
19 equivalent business and religious activities provided that Plaintiffs also adhere to
20 the social distancing guidelines currently in place.

21 h. The Orders and Emergency Directives are preempted by Federal law
22 and impermissibly restrict the issuance, filing, and dispensing of FDA-approved
23 drugs issued pursuant to a valid prescription.

1 i. The Orders and Emergency Directives violate Plaintiffs' and their
2 patients' constitutional rights to privacy – the right of individuals to protect their
3 health by making autonomous decisions about medical treatment with a physician
4 of their choice – which is a fundamental right that cannot be abridged or dictated
5 by Defendants and where no justification was provided that would warrant such an
6 intrusion, not even a declaration by the Defendant Governor Sisolak of a state of
7 emergency.

9 j. The Orders and Emergency Directives violate Plaintiffs' and their
10 patients' constitutional rights to equal protection under Amendment XIV, Section
11 1, of the U.S. Constitution – particularly because the March 23, 2020 emergency
12 regulation (and its subsequent April 20, 2020 waiver) authorize hospital physicians
13 to issue, fill, and dispense these drugs to patients testing positive for COVID-19,
14 while simultaneously prohibiting non-hospital physicians from doing so.

16 k. The Orders and Emergency Directives violate Plaintiffs' and their
17 patients' constitutional rights to due process under Article I, Section 8, of the
18 Nevada Constitution, and Amendment V, Section 1, and Amendment XIV, Section
19 1, of the U.S. Constitution – specifically in restricting the practice of medicine
20 under a valid medical license without due process.

22 99. Unless and until injunctive relief is granted, Plaintiffs will continue to suffer
23 irreparable harm for which they are left without an adequate remedy at law, in that they are
24 subject to criminal cases (i.e., misdemeanor citations and fines) based on the enforcement of
25 the Orders and Emergency Directives by law enforcement agencies and their agents.

1 **LEAP Team**

2 100. Defendant Governor Sisolak appointed a Local Empowerment Advisory Panel
3 ("LEAP") on April 30, 2020, to serve as a resource for Nevada Counties as they work
4 through the necessary requirements to reopen, and to share best practices and guidelines.
5 Defendant Kirkpatrick appointed was appointed to represent the Urban Counties, while
6 Defendant Goicochea was appointed to represent the Rural Communities.

7 101. As of their date of appointment, Defendants Kirkpatrick and Goicochea have
8 failed to communicate any plans of reopening, operations, etc. with Nevadans.

9 102. On April 14, 2020, Defendant Department of Health and Human Services
10 halted two Las Vegas operations providing rapid tests for COVID-19; to wit, Sahara Urgent
11 Care and Cura Telehealth & Wellness, following specific instructions from State Regulators
12 to cease operations.

13 103. Despite a downward reduction in COVID-19 morbidity, Defendant Governor
14 Sisolak, on April 21, 2020, stated that Nevada was not ready to advance to Phase I of
15 reopening. Defendant Governor Sisolak's actions were unsupported by substantial
16 evidence, grossly negligent, arbitrary and capricious, and with a wanton disregard for the
17 people of the State of Nevada.

18 **EQUITABLE ALLEGATIONS**

20 104. In violation of State and Federal Constitutional and Statutory provisions,
21 Defendants, and their agents and employees, including Defendants DOES 1 to 100, have,
22 and unless enjoined, will continue to subject the Plaintiff class to constitutional violations
23 and injury that will cause Plaintiffs and the other class members harm, and Plaintiffs will be
24 fearful of exercising their right to peacefully pray, assemble, engage in business, and to be
25 treated for COVID-19.

CLAIMS FOR RELIEF

L.

FIRST CLAIM FOR RELIEF
VIOLATION OF THE FIFTH AMENDMENT
Right to travel as enforced by 42 § 1983
(Against All Defendants)

105. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

106. While not explicitly defined in the U.S. Constitution, the Supreme Court has acknowledged that certain unarticulated rights are implicit in enumerated guarantees.... Yet these important but unarticulated rights [association, privacy, presumed innocent, etc.] have nonetheless been found to share constitutional protection in common with explicit guarantees.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 579-580 (1980).

107. “The right to travel is a part of the liberty of which the citizens cannot be deprived without the due process of law under the Fifth Amendment.” *Kent v. Dulles*, 357 U.S. 116, 127 (1958).

108. Courts have found that “[f]reedom of movement is kin to the right of assembly and to the right of association. These rights may not be abridged. *Aptheker v. Secretary of State*, 378 U.S. 500, 520 (1964).

109. The United States Supreme Court has found that this right to travel includes in state, intrastate, or foreign travel. *See, e.g., Kent v. Dulles*, 357 U.S. at 126 (“Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage.”).

110. The right to travel is fundamental because “[f]reedom of movement, at home and abroad, is important for job and business opportunities – for cultural, political, and

1 social activities – for all the commingling which gregarious man enjoys.” *Aptheker*, 378
 2 U.S. at 519-520 (1964). *See also Kent*, 357 U.S. at 126 (where “[t]ravel abroad, like travel
 3 within the country, may be necessary for a livelihood. It may be as close to the heart of the
 4 individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic
 5 in our scheme of values.”).

6 111. Even though we are in a state of emergency, and people may abuse the right to
 7 travel, citizens do not lose their constitutional rights. *See Aptheker*, 378 U.S. at 520 (“Those
 8 with the right of free movement use it at times for mischievous purposes. But that is true of
 9 many liberties we enjoy. We nevertheless place our faith in them, and against restraint,
 10 knowing that the risk of abusing liberty so as to give rise to punishable conduct is part of the
 11 price we pay for this free society.”).

12 112. When a government practice restricts fundamental rights like the right to
 13 travel, it is subject to “strict scrutiny” and can be justified only if it furthers a compelling
 14 governmental purpose, and even then, only if no less restrictive alternative is available. *See*,
 15 *e.g.*, *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 257-258 (1974); *Dunn v.*
 16 *Blumstein*, 405 U.S. 330, 339-341 (1972); *Shapiro v. Thompson*, 394 U.S. 618, 89 (1969),
 17 *Maher v. Roe*, 432 U.S. 464, 488 (1977).

18 113. Defendant Sisolak’s Emergency Directives mandate that Plaintiffs stay at
 19 home and shut down their “Non-Essential Businesses”.

20 114. Requiring Plaintiffs to abstain from conducting business operations, even those
 21 in compliance with the CDC’s social distancing guidelines, violates Plaintiffs’
 22 Constitutional right to travel.

23 115. Unless enjoined, Defendants will act under color of law to deprive Plaintiffs of
 24 their right to travel as protected by the Due Process Clause.

116. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their Constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders and Emergency Directives.

117. Pursuant to 42 U.S. C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Orders and Emergency Directives.

118. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

II.
SECOND CLAIM FOR RELIEF
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH
AMENDMENT
(Against All Defendants)

119. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

120. Plaintiffs have a fundamental property interest in conducting lawful business activities that are protected by the Due Process Clause of the Fourteenth Amendment.

121. The Orders and Emergency Directives, and Defendants' enforcement thereof, violate Plaintiffs' substantive due process rights secured by the Fourteenth Amendment to the U.S. Constitution. Under the Due Process Clause of the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law." The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. *See Duncan v. Louisiana*, 391 U.S. 145, 147-149 (1968). In addition, these liberties extend to certain personal choices central to individual dignity and autonomy,

1 including intimate choices that define personal identity and beliefs. *See, e.g., Eisenstadt v.*
2 *Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 484-486 (1965).

3 122. Defendants’, which expressly deprive Plaintiffs of their rights and liberties by
4 prohibiting the lawful operation of their businesses by ordering the closure of “Non-
5 Essential Businesses”, did not afford Plaintiffs with a constitutionally adequate hearing with
6 which to present their case for their businesses to not be shut down. At a minimum,
7 Plaintiffs aver that they should have been able to decide for themselves whether or not to
8 “shut down”, if their businesses / business models were not properly equipped to deal with
9 the health and safety guidelines as issued by the Federal and State Governments in
10 connection with the COVID-19 crisis.

123. 123. Similarly, Defendants’, which expressly deprive Plaintiffs of their rights and
124 liberties by restricting a physician’s right to practice medicine and a patient’s right to
125 receive treatment for a communicable disease by prohibiting the lawful prescription of an
126 FDA-approved drug, did not afford Plaintiffs with a constitutionally adequate hearing with
127 which to present their case for their right to practice medicine and the right to receive
128 treatment during a global pandemic. Especially as NRS 441A.200 mandates these rights,
and specifically prohibits such interference by any person or public body. Plaintiffs aver
that they should have been able to decide for themselves, as authorized under Federal and
State law, whether or not to prescribe an FDA-approved drug for use in the treatment of
COVID-19.

129 124. Defendants failed to comply with the procedural and substantive requirements
130 of the U.S. Constitution in connection with Plaintiffs’ rights and liberties as they relate to
131 their respective properties / businesses / medical licenses / treatment, which would have
132 given Plaintiffs a meaningful opportunity to respond to the proposed Orders and Emergency

1 Directives, and to explain how and why they were so deeply flawed and unconstitutional as
2 applied to Plaintiffs.

3 125. Because Defendants' decisions in issuing the Emergency Directives were made
4 in reliance on procedurally deficient and substantively lawful processes, Plaintiffs were
5 directly and proximately deprived of their property and liberties, and consequently, their
6 ability to lawfully operate their businesses, their ability to practice medicine pursuant to a
7 validly issued license, and to provide and receive treatment for a communicable disease,
8 without unconstitutional government overreach.

9 126. Because Defendants' decisions were made in reliance upon an arbitrary and
10 capricious interpretation of the Nevada Constitution and related laws and statutes with
11 respect to their ability to order the state-wide "closure" of all "Non-Essential Businesses",
12 and the prohibition of the prescription and issuance of FDA-approved drug for outpatients
13 with COVID-19, Plaintiffs were directly and proximately deprived of their property rights
14 and liberties absent substantive due process of law, in violation of the Fourteenth
15 Amendment to the U.S. Constitution.

16 127. Plaintiffs have no adequate remedy at law and will suffer serious and
17 irreparable harm to their constitutional rights unless Defendants are enjoined from
18 implementing and enforcing the Orders and Emergency Directives.

19 128. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory
20 relief and temporary, preliminary, and permanent injunctive relief invalidating and
21 restraining enforcement of the Orders and Emergency Directives.

22 129. Plaintiffs found it necessary to engage the services of private counsel to
23 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
24 attorneys' fees pursuant to 42 U.S.C. § 1988.

1

III.

THIRD CLAIM FOR RELIEF

VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH

AMENDMENT

(*Against All Defendants*)

2

3

4

5 130. Plaintiffs incorporate herein by reference each and every allegation contained
6 in the preceding paragraphs of this Complaint as though fully set forth herein.

7 131. At its core, the Equal Protection Clause of the Fourteenth Amendment to the
8 U.S. Constitution functions as a constitutional guarantee that no person or group will be
9 denied the protection under the law that is enjoyed by similar persons or groups. In other
10 words, persons similarly situated must be similarly treated. Equal protection is extended
11 when the rules of law are applied equally in all like cases and when persons are exempt
12 from obligations greater than those imposed upon others in like circumstances.

14 132. The Orders and Emergency Directives, and Defendants' enforcement thereof,
15 violate the Fourteenth Amendment, both facially and as-applied to Plaintiffs. The
16 Fourteenth Amendment of the Constitution provides that “[n]o State shall . . . deny to any
17 person within its jurisdiction the equal protection of the laws.” Equal protection requires the
18 State to govern impartially—not draw arbitrary distinctions between businesses based solely
19 on differences that are irrelevant to a legitimate governmental objection.

21 133. Defendants have intentionally and arbitrarily categorized Nevada businesses
22 and conduct as either “Essential” or “Non-Essential.” Those businesses classified as
23 “Essential,” or as participating in “Essential Services”, are permitted to go about their
24 business and activities provided certain social distancing practices are employed. Those
25 classified as “Non-Essential,” or as engaging in “Non-essential” activities, are required to

26
27
28

shut down and have their workers stay in their residences, unless it becomes absolutely necessary for them to leave for one of the enumerated “Essential” activities.

134. Strict scrutiny under the Equal Protection Clause applies where, as here, the classification impinges on a fundamental right – the right to free exercise, including the right to due process and the right to travel (both interstate and intrastate), the right to privacy, the right to practice medicine, and the right to receive treatment, among others.

135. Defendants cannot satisfy strict scrutiny because their arbitrary classifications are not narrowly tailored measures that further compelling government interests, for the reasons stated above.

136. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders and Emergency Directives.

137. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Orders and Emergency Directives.

138. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys’ fees pursuant to 42 U.S.C. § 1988.

IV.

FOURTH CLAIM FOR RELIEF VIOLATION OF THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT (*Against All Defendants*)

139. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

1 140. The United States Supreme Court has long held that “the Fifth
2 Amendment...was designed to bar Government from forcing people alone to bear public
3 burdens which, in all fairness and justice, should be borne by the public as a whole.” *See*
4 *Armstrong v. United States* (1960) 364 U.S. 40, 49.

5 141. Defendants’ Orders and Emergency Directives mandated that because
6 Plaintiffs were “Non-Essential Businesses”, they were required to “shut down” and cease all
7 operations as a means to help curb the spread of COVID-19. Such a mandate completely
8 and unconstitutionally deprived Plaintiffs of all economically beneficial use of their
9 businesses without just compensation.

10 142. While the “police power” is inherent in a sovereign government and is reserved
11 for the States in the Tenth Amendment to the U.S. Constitution, it is not without
12 constitutional limits. *See Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926) (holding
13 that local governments may protect the general welfare through the enactment of residential
14 zoning ordinances). However, a government’s “police power” in this area is restricted by
15 Constitutional considerations, including the Fifth Amendment’s “Takings Clause”, as well
16 as Due Process and Equal Protection.

17 143. Defendants’ Orders and Emergency Directives, and Defendants’ enforcement
18 thereof, has caused both a complete and total regulatory and physical taking of Plaintiffs’
19 property without just compensation in violation of the Takings Clause of the Fifth
20 Amendment to the U.S. Constitution. At a minimum, the effect of Defendants’ Orders and
21 Emergency Directives constitutes a “partial” taking under the Penn-Central three-factor
22 test. *See Penn Central Trans. Co. v. City of New York*, 438 U.S. 104, 124 (1978). As a
23 result, Defendants’ blatant violation of the Takings Clause of the Fifth Amendment has
24 caused proximate and legal harm to Plaintiffs.
25
26
27
28

1 144. Plaintiffs have no adequate remedy at law and will suffer serious and
2 irreparable harm to their constitutional rights unless Defendants are enjoined from
3 implementing and enforcing the Orders and Emergency Directives.

4 145. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory
5 relief and temporary, preliminary, and permanent injunctive relief invalidating and
6 restraining enforcement of the Orders and Emergency Directives.
7

8 146. Plaintiffs found it necessary to engage the services of private counsel to
9 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys'
10 fees pursuant to 42 U.S.C. § 1988.
11

V.
FIFTH CLAIM FOR RELIEF
VIOLATION OF THE NEVADA CONSTITUTION
ARTICLE I DECLARATION OF RIGHTS
(Against All Defendants)

15 147. Plaintiffs incorporate herein by reference each and every allegation contained
16 in the preceding paragraphs of this Complaint as though fully set forth herein.
17

18 148. Since 1864, the Nevada Constitution has provided intrinsic and unalienable
19 rights and liberties to its citizens. Chief among those rights and liberties are those found in
20 Article I of the Nevada Constitution. Article I, Section 1, of the Nevada Constitution
21 provides, in pertinent part, that “[a]ll men are by Nature free and equal and have certain
22 inalienable rights among which are those of enjoying and defending life and liberty;
23 Acquiring, Possessing and Protecting property and pursuing and obtaining safety and
24 happiness...”
25

26 149. Similarly, Article I, Section 8, provides that no person shall be deprived of life,
27 liberty, or property, without due process of law.
28

150. Defendants' Orders and Emergency Directives have not only interfered with Plaintiffs' rights and liberties as set forth under Article I, Sections 1, 4, 8, 10, and 11 of the Nevada Constitution, but have further deprived them of the use, enjoyment and ability to operate their respective businesses on account of a discriminatory classification as "Non-Essential Businesses".

151. Defendants' Orders and Emergency Directives have proximately and legally caused tremendous financial harm not just to Plaintiffs' businesses, but to the entire Nevada economy, which will continue to have deleterious effects unless and until Defendants are enjoined by this Court from enforcing their respective Orders and Emergency Directives.

152. Requiring Plaintiffs to abstain from conducting lawful business in the State of Nevada, despite other compliance measures being taken to satisfy the public health interests at stake, violates their Nevada Constitutional liberty rights.

153. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their Constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders and Emergency Directives.

154. Plaintiffs have found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are entitled to an award of attorneys' fees thereon.

VI.
SIXTH CLAIM OF RELIEF
VIOLATION OF NEVADA CONSTITUTION
Right to Liberty (Nev. Const. Art. 1, § 4)
(Against All Defendants)

155. Plaintiffs incorporate herein by reference each and every allegation contained
in the preceding paragraphs of this Complaint as though fully set forth herein.

156. Article 1, Section 4, of the Nevada Constitution provides, in pertinent part, that “[t]he free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed in this State...”

157. Nevada Courts have routinely held that the Nevada Constitution mirrors the Free Exercise Clause in the First Amendment. Emergency Directive 013, passed April 8, 2020, which precludes attendance at places of worship, lacks a compelling state interest as to such religiously-motivated Orders and Emergency Directives.

158. Requiring places of worship to limit the number of parishioners physically present violates the Free Exercise Clause of the Nevada and United States Constitutions, and whereby Emergency Directive 013 specifically precludes the Free Exercise of Religion in Nevada.

159. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their Constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders and Emergency Directives.

160. Plaintiffs have found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are entitled to an award of attorneys' fees thereon.

VII.
SEVENTH CLAIM FOR RELIEF
VIOLATION OF THE NEVADA CONSTITUTION
Right to Liberty (Nev. Const. Art. 1, § 8)
(Against All Defendants)

161. Plaintiffs incorporate herein by reference each and every allegation contained
in the preceding paragraphs of this Complaint as though fully set forth herein.

1 162. Article 1, Section 8, of the Nevada Constitution provides, in pertinent part, that
2 “[n]o person shall be deprived of life, liberty, or property, without due process of law. Private
3 property shall not be taken for public use without just compensation having been first made,
4 or secured, except in cases of war, riot, fire, or great public peril, in which case compensation
5 shall be afterward made...”

6 163. Moreover, the principle behind the concept of just compensation for property
7 taken for public use is to put the owner in as good a position pecuniary as he or she would
8 have occupied if his or her property had not been taken.

9 164. Finally, the Constitutional guarantee of just compensation for property taken
10 by the Government is not only intended to protect the landowner (or business owner), but it
11 also protects the public by limiting its liability to losses that can fairly be attributed to the
12 taking.

13 165. Requiring Plaintiffs to abstain from conducting lawful business in the State of
14 Nevada, despite other compliance measures being taken to satisfy the public health interests at
15 stake, violates their Nevada Constitutional liberty rights.

16 166. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable
17 harm to their Constitutional rights unless Defendants are enjoined from implementing and
18 enforcing the Orders and Emergency Directives.

19 167. Plaintiffs have found it necessary to engage the services of private counsel to
20 vindicate their rights under the law. Plaintiffs are therefor entitled to an award of attorneys'
21 fees and costs thereon.

22
23
24
25
26
27
28

VIII.
EIGHTH CLAIM FOR RELIEF
VIOLATION OF NRS 414.155
(Against All Defendants)

168. Plaintiffs incorporate herein by reference each and every allegation contained
in the preceding paragraphs of this Complaint as though fully set forth herein.

169. NRS 414.155, entitled "*Limitations on emergency powers relating to firearms*", provides in pertinent part, that:

“Pursuant to Amendment II of the Constitution of the United States, and Section 11 of Article 1 of the Constitution of the State of Nevada, and notwithstanding any other provision of law, the emergency powers conferred upon the Governor and upon the executive heads or governing bodies of the political subdivisions of this State must not be construed to allow:

1. The confiscation of a firearm from a person unless the person is:
 - (a) In unlawful possession of the firearm; or
 - (b) Unlawfully carrying the firearm; or
 2. The imposition of additional restrictions as to the lawful possession, transfer, sale, carrying, storage, display or use of:
 - (a) Firearms;
 - (b) Ammunition; or
 - (c) Components of firearms or ammunition...”

170. Defendant's March 20, 2020 Emergency Directive 003 labeling firearm stores
"Non-Essential Businesses" violates NRS 414.155, and Amendment II of the U.S.
Constitution and Article I, Section 11, of the Nevada Constitution.

171. Defendants engaged in an act or omission respecting legal duty of an aggravated character, or with willful, wanton misconduct.

172. Plaintiffs have found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees and costs thereon.

IX.
NINTH CLAIM FOR RELIEF
GROSS NEGLIGENCE
(All Defendants)

173. Plaintiffs incorporate herein by reference each and every allegation contained
in the preceding paragraphs of this Complaint as though fully set forth herein.

174. Defendants owed a duty of care to Plaintiffs and class as leaders of this State with Nevadan lives reliant on their decisions. Specifically, Defendants Azzam and Asad are responsible for investigating all known infectious and communicable diseases and shall order a medical examination or test for each person whom is believed to have such disease, in order to verify its presence. *See* NRS 441A.160. Further, persons with an infectious and communicable disease are subject to a misdemeanor if they conduct themselves in a manner likely to expose others to the disease. *See* NRS 441A.180.

175. Defendants were grossly negligent in failing to provide the adequate investigation and testing for persons who were believed to have COVID-19, and in taking actions necessary to prevent its further transmission.

176. Further, any isolation or quarantine required of persons having such infectious and communicable disease must comply with the provisions of NRS 441A.510 to 441A.720, inclusive. *See* NRS 441A.160. Defendants were grossly negligent in failing to follow or even

1 cite any provisions as contained in Chapters 441A of the Nevada Revised Statutes or the
2 Nevada Annotated Code.

3 177. Further, when a health care provider or medical facility significantly
4 contributes to a case of an infectious disease, Defendants Azzam and Asad are required by law
5 to issue a written order directing said health care provider or medical facility to cease and
6 desist any conduct which is harmful to the health, safety, and welfare of the public, and take
7 any other action necessary to reduce such harm. *See* NRS 441A.169. Defendants were
8 grossly negligent in failing to issue such a written order when hospitals actively turned away
9 patients symptomatic of COVID-19 because their symptoms were “not yet severe enough”.

10 178. Further, no health authority or any other person is empowered or authorized to
11 interfere in any manner with the right of a person to receive approved treatment for a
12 communicable disease from any physician, clinic, or other person of his or her choice. *See*
13 NRS 441A.200.

14 179. Defendants were, at a minimum, grossly negligent, if not acting in willful and
15 wanton disregard, when adopting the March 23, 2020 emergency regulation amending
16 Chapter 639 of the Nevada Annotated Code, thereby restricting access to chloroquine and
17 hydroxychloroquine, both drugs approved by the FDA for use in the treatment of COVID-19,
18 to people testing positive for COVID-19 outside of a hospital setting.

19 180. Further, pursuant to NRS 441A.120, Defendants Azzam and Asad are required
20 to follow the recommendations, guidelines, and publications of Federal Agencies for the
21 control of infectious and communicable diseases. *See* NRS 441A.120; NAC 441A.200.
22 Defendants were grossly negligent in failing to follow the recommendations and guidelines as
23 established in these publications.

24
25
26
27
28

181. NRS 439.130 provides that if the Chief Medical Officer is not licensed to practice medicine in this State, and Defendant Azzam here is not, shall not, in carrying out the duties of Chief Medical Officer, engage in the practice of medicine. Defendant Azzam was grossly negligent in his capacity as Chief Medical Officer when making decisions that constitute the practice of medicine during the COVID-19 pandemic, and specifically, *inter alia*, providing the State Board of Pharmacy with a recommendation to restrict the prescribing of an approved treatment to persons with a communicable disease, without being licensed to do so.

182. Defendants, and specifically, Defendant Asad, had a duty to independently investigate the errant IHME and CDC information provided, and Defendants breached that duty when they failed to exercise even the slightest degree of care when they restricted a potential treatment for COVID-19, and when they failed to request Federal disaster relief for weeks after Defendant Governor Sisolak declared a state of emergency.

183. Defendants engaged in an act or omission respecting legal duty of an aggravated character, or with willful, wanton misconduct.

184. Plaintiffs have found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees and costs thereon.

REQUESTED RELIEF

WHEREFORE, Plaintiffs request that this Court:

(1) Issue a declaratory judgment with the following:

(a) Declaration that Defendant Governor Sisolak's Executive Order 2020-
ency Directives 001, 002, 003, 006, 007, 010, 013, and 016, and their

1 corresponding emergency regulations dated March 20, 2020 and March 23, 2020 are null
2 and void, of no effect, as:

- 3 (i) Unconstitutional under the Fifth Amendment;
- 4 (ii) Unconstitutional under the Fourteenth Amendment;
- 5 (iii) Arbitrary and capricious, an abuse of discretion, or otherwise
6 not in accordance with the U.S. and/or Nevada Constitutions;
- 7 (iv) Contrary to Constitutional right, power, privilege, or immunity
8 in violation of the U.S. and/or Nevada Constitutions; and
- 9 (v) In excess of statutory jurisdiction, authority, or limitations, or
10 short of statutory right in violation of the U.S. and/or Nevada Constitutions;

11 (b) Declaration that Defendant's March 20, 2020 enumerated list of
12 "Essential Businesses" versus "Non-Essential Businesses" following Defendant Governor
13 Sisolak's Emergency Directives is null and void, of no effect, as:

- 14 (i) Unconstitutional under the Fifth Amendment;
- 15 (ii) Unconstitutional under the Fourteenth Amendment;
- 16 (iii) Arbitrary and capricious, an abuse of discretion, or otherwise
17 not in accordance with the U.S. and/or Nevada Constitutions;
- 18 (iv) Contrary to Constitutional right, power, privilege, or immunity
19 in violation of the U.S. and/or Nevada Constitutions; and
- 20 (v) In excess of statutory jurisdiction, authority, or limitations, or
21 short of statutory right in violation of the U.S. and/or Nevada Constitutions;

22 (c) Declaration that Defendant Governor Sisolak's April 8, 2020
23 prohibition of gathering in places of worship is null and void, of no effect, as:

- 24 (i) Unconstitutional under the First Amendment;

- (ii) Unconstitutional under the Fourteenth Amendment;
 - (iii) Arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the U.S. and/or Nevada Constitutions;
 - (iv) Contrary to Constitutional right, power, privilege, or immunity in violation of the U.S. and/or Nevada Constitutions; and
 - (v) In excess of statutory jurisdiction, authority, or limitations, or short of statutory right in violation of the U.S. and/or Nevada Constitutions;

(2) Set aside and hold unlawful Defendants' Orders and Emergency Directives;

(3) Permanently enjoin Defendants and all persons and entities in active concert or participation with Defendants, including law enforcement authorities and their agents, from enforcing the Orders and Emergency Directives;

(4) Issue a TRO and a preliminary injunction preventing Defendants from enforcing or implementing the Orders and Emergency Directives until this Court decides the merits of this lawsuit;

(5) Permanently enjoin Defendants and all persons and entities in active concert or participation with Defendants from enforcing the Orders and Emergency Directives unless they are issued in accordance with all procedural and substantive due process requirements of the U.S. Constitution;

(6) Award Plaintiffs damages arising out of their § 1983 Claims, and specifically, under the Fifth Amendment to the U.S. Constitution, and Article 1, Section 8, of the Nevada Constitution's Takings Clause(s);

(7) Award Plaintiffs the reasonable value of the loss of their businesses by virtue of Defendant Governor Sisolak's Orders and Emergency Directives;

(8) For such other and further relief to which Plaintiffs may show themselves justly entitled; and

(9) For an award of reasonably attorneys' fees and his costs on his behalf expended as to such Defendants pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1988.

AFFIRMATION

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 12th day of May 2020.

CHATTAH LAW GROUP

/s/ S. CHATTAH
SIGAL CHATTAH, ESQ.
Nevada Bar No.: 8264
CHATTAH LAW GROUP
5875 S. Rainbow Blvd. #203
Las Vegas, Nevada 89118
Tel.:(702) 360-6200
Attorney for Plaintiffs

JOEY GILBERT LAW

By: /s Joseph S. Gilbert
Joseph S. Gilbert, Esq.
Roger O'Donnell, Esq
Attorneys for Plaintiffs/Petitioners